

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1631 OF 2024

Locon Solutions Private Limited

.Petitioner

Versus

The Recovery Officer, Office of the Recovery Officer, .Respondents
Marol & anr.

Mr. Karl Tamboly a/w. Ms. Vatsala Pant & Mr. Aman Marwah i/b. Indus
Law, Advocates, for the Petitioner

Mr. Shailesh S. Pathak, Advocate, for the Respondents – ESIC

CORAM : MADHAV J. JAMDAR, J.

DATE : 12.08.2024

P. C.

1. By the present Writ Petition filed under Article 226 of the Constitution of India, the Petitioner is challenging the legality and validity of the Order dated 05.07.2023 passed by the Recovery Officer, Mumbai under Sections 45-C to 45-I of the Employees' State Insurance Act, 1948 ("**Said Act**") r/w. Rule 26(1) of the Second Schedule of the Income Tax Act, 1961.

2. At the outset, Mr. Pathak, learned counsel for the Respondents raises an objection that there is an alternate efficacious remedy of filing an Application under Sections 75 & 77 of the said Act before the ESIC Court, Mumbai.

3. In view of the said submissions, Mr. Karl Tamboly, learned counsel for the Petitioner seeks leave to withdraw the Writ Petition with liberty to file an Application under Sections 75 & 77 of the said Act before the ESIC Court, Mumbai. He further states that the entire amount which is the subject matter of the impugned Order has been recovered by the Respondents. He, therefore, states that ad-interim Order dated 17.10.2023 passed by a learned Single Judge (Coram : Milind N. Jadhav, J.) in this Writ Petition be continued during the pendency of the said Application proposed to be filed under Sections 75 & 77 of the said Act.

4. Accordingly, the Writ Petition is allowed to be withdrawn and disposed of as such with liberty to avail an alternate efficacious remedy.

5. It is clarified that if such Application under Sections 75 & 77 of the said is filed within four weeks from today then the same be decided expeditiously. Till the disposal of the said Application, Order dated 17.10.2023 passed by a learned Single Judge in this Writ Petition of granting protection shall remain in operation.

6. It is clarified that as the Respondents have recovered the entire amount which is the subject matter of the impugned Order, the Petitioner is not liable to pay 50% of the amount as contemplated

under Sections 75 2(B) of the said Act.

7. It is clarified that this Court has not considered the merits and all the contentions of both the parties are expressly kept open.

[MADHAV J. JAMDAR, J.]